



HOUSE BILL 357: Chemical Analysis Reports/District Court.

2015-2016 General Assembly

Committee:		Date:	August 25, 2016
Introduced by:		Prepared by:	Tawanda N. Foster Staff Attorney
Analysis of:	S.L. 2016-10		

OVERVIEW: *S.L. 2016-10 amends the procedures governing the admissibility of chemical analysis test results into evidence.*

This act becomes effective October 1, 2016, and applies to trials commencing on or after that date.

BILL ANALYSIS: G.S. 20-139.1 sets out procedures governing the admissibility and use of chemical analysis test results in implied-consent offenses.¹ The amended statute does the following:

- The notice-and-demand provisions² of this statute require the State to notify the defendant *at least 15 business days before the proceeding* at which a chemical analysis document (report, statement, or affidavit) would be used of its intention to introduce the document into evidence and to provide a copy of it to the defendant. This law imposes an additional requirement that the State provide notice of intent and a copy of the document to the defendant *no later than 15 business days after receiving* the document.
- In subsections (c1) "*Admissibility*," (c3) "*Procedure for Establishing Chain of Custody Without Calling Unnecessary Witnesses*," and (e2) that limits the State's use of the chemical analyst's affidavit in district court, the law provides that if the proceeding at which the chemical analysis document would be introduced into evidence is continued, the defendant's written objection or failure to file a written objection remains in effect at any subsequent calendaring of that proceeding.

¹ Criminal offenses involving the consumption of alcohol or other impairing substances (including driving while impaired) are classified under State law as "implied consent offenses." An individual charged with or arrested for an implied consent offense may be required to submit to chemical analysis testing to detect the presence of alcohol or other impairing substances and measure their concentration. The results of such testing may be admissible against the individual in court. An individual who refuses to submit to such testing may have his or her license administratively revoked, and the refusal may be considered as substantive evidence of his or her guilt of the offense(s) charged.

² The Sixth Amendment to the United States Constitution provides that in criminal prosecutions the accused has a right to be confronted with the witnesses against him. This provision is known as the "confrontation clause." There are a significant number of federal and state cases that govern the admissibility of testimonial evidence and the accused's right to confront witnesses against him, especially as it relates to driving while impaired and drug cases.

Confrontation clause rights, like many constitutional rights generally, may be waived. To be valid a waiver of a constitutional right must be knowing, voluntary, and intelligent. North Carolina, like some other states, has enacted notice and demand statutes to address constitutional concerns and ensure valid waivers where necessary. Notice and demand statutes require the prosecution to give a defendant notice that it intends to introduce a testimonial forensic or chemical analysis report at trial. A defendant then has a period of time in which to object to the admission of the evidence absent the analyst's appearance live at trial. The following statutes currently include notice and demand provisions: G.S. 8-58.20, 20-139.1, and 90-95.

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- Makes clarifying changes relating to the terms, "report," "affidavit," and "statement."
- The defendant's failure to file a timely objection to the introduction of a chemical analyst's affidavit in district court shall be deemed a waiver of the right to object to the affidavit's admissibility. This law adds a provision requiring that if such a waiver occurs, the affidavit be admitted into evidence without the analyst's testimony.

EFFECTIVE DATE: This act would become effective on October 1, 2016 and applies to trials commencing on or after that date.